No. 12428

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

WILLIAM P. THORNTON, APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF OF WILLIAM P. THORNTON

MARION GARLAND
and
WILLIAM R. GARLAND,
Attorneys for the Appellee.

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JURISDICTION

Jurisdiction is not questioned and is as set out in the appellant's brief.

QUESTIONS PRESENTED

No additional questions.

STATEMENT

Statement of the appellant is fair and ample for the questions involved.

ARGUMENT

I

ARGUMENT THAT PUBLIC VESSELS ACT APPLIES

There is no question but what the argument of the United States is correct that the appellee should have been given judgment under the statute which it sued.

We failed to follow his argument that because the Public Vessels Act (46 U. S. Code 782, 743) applies in a case similar to this that it precludes the application of the Tucker and Tort Claims Acts (28 U. S. Code 2411, 2516) as neither act purports to be an exclusive act and it can readily be seen that each case must rest on its own bottom and the fact that a plaintiff might have two remedies would not be unusual.

The argument as far as this case is concerned is purely academic, as the appellant conceeds that we have brought the action under a correct act to give us the relief.

II

Argument as to Whether Four or Six Per Cent Interest Should Apply.

We have checked the law in this matter and find that the following case, in our opinion, is directly in point and holds that the four per cent should apply, *Lauro v. U. S.*, 168 F. (2d) 714. This case is from the Second Circuit and is not binding on your honors.

Again, whether four per cent interest is held to apply or six per cent is held to apply from date of judgment would not make over Twelve Dollars ($12.00) difference in the total amount of judgment at the end of the year, and we pray that your honors, in affirming this case, do not decide that the appellee must pay costs even if you decide the four per cent interest applies.

In other words, the question of four or six per cent interest in a case of this kind is so trivial that the appellee should not have to pay costs because of the decision adverse to him on this point.

CONCLUSION

WHEREFOR, appellee prays that the decision of the District Court should be affirmed, with interest at four per cent and costs to be paid by the appellant.

Respectfully submitted,

MARION GARLAND *and*
WILLIAM R. GARLAND,
Attorneys for the Appellee.

APRIL 1950.